

HOUSE BILL No. 1385

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-8-8; IC 11-13-3-4; IC 35-38; IC 35-42-4-10.

Synopsis: Discretion and sexually violent predators. Specifies the procedure for determining who is a sexually violent predator. Revises the definition of "sex offense". Places certain restrictions on sex offenders who are offenders against children. Makes other changes and conforming amendments. (The introduced version of this bill was prepared by the sentencing policy study committee.)

Effective: Upon passage; July 1, 2007.

Lawson L, Welch, Ulmer, Foley

January 16, 2007, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1385

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 11-8-8-5.2 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2007]: **Sec. 5.2. As used in this chapter, "sex offense" means an**
4 **offense listed in section 5(a) of this chapter.**

5 SECTION 2. IC 11-8-8-17, AS ADDED BY P.L.140-2006,
6 SECTION 13, AND P.L.173-2006, SECTION 13, IS AMENDED TO
7 READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 17. A sex
8 offender who knowingly or intentionally:

9 (1) fails to register when required to register under this chapter;
10 (2) fails to register in every location where the sex offender is
11 required to register under this chapter;
12 (3) makes a material misstatement or omission while registering
13 as a sex offender under this chapter; or
14 (4) fails to register in person and be photographed at least one (1)
15 time per year as required under this chapter;
16 commits a Class D felony. However, the offense is a Class C felony if
17 the sex offender has a prior unrelated conviction for an offense under

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1 this section or based on the person's failure to comply with any
2 requirement imposed on a sex offender under this chapter.

3 SECTION 3. IC 11-13-3-4, AS AMENDED BY P.L.60-2006,
4 SECTION 1, AS AMENDED BY P.L.139-2006, SECTION 2, AND
5 AS AMENDED BY P.L.140-2006, SECTION 15, AND P.L.173-2006,
6 SECTION 15, IS CORRECTED AND AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) A condition
8 to remaining on parole is that the parolee not commit a crime during
9 the period of parole.

10 (b) The parole board may also adopt, under IC 4-22-2, additional
11 conditions to remaining on parole and require a parolee to satisfy one
12 (1) or more of these conditions. These conditions must be reasonably
13 related to the parolee's successful reintegration into the community and
14 not unduly restrictive of a fundamental right.

15 (c) If a person is released on parole, the parolee shall be given a
16 written statement of the conditions of parole. Signed copies of this
17 statement shall be:

- 18 (1) retained by the parolee;
- 19 (2) forwarded to any person charged with the parolee's
- 20 supervision; and
- 21 (3) placed in the parolee's master file.

22 (d) The parole board may modify parole conditions if the parolee
23 receives notice of that action and had ten (10) days after receipt of the
24 notice to express the parolee's views on the proposed modification.
25 This subsection does not apply to modification of parole conditions
26 after a revocation proceeding under section 10 of this chapter.

27 (e) As a condition of parole, the parole board may require the
28 parolee to reside in a particular parole area. In determining a parolee's
29 residence requirement, the parole board shall:

- 30 (1) consider:
 - 31 (A) the residence of the parolee prior to the parolee's
 - 32 incarceration; and
 - 33 (B) the parolee's place of employment; and
- 34 (2) assign the parolee to reside in the county where the parolee
- 35 resided prior to the parolee's incarceration unless assignment on
- 36 this basis would be detrimental to the parolee's successful
- 37 reintegration into the community.

38 (f) As a condition of parole, the parole board may require the
39 parolee to:

- 40 (1) periodically undergo a laboratory chemical test (as defined in
- 41 IC 14-15-8-1) or series of tests to detect and confirm the presence
- 42 of a controlled substance (as defined in IC 35-48-1-9); and

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(2) have the results of any test under this subsection reported to the parole board by the laboratory.

The parolee is responsible for any charges resulting from a test required under this subsection. However, a person's parole may not be revoked on the basis of the person's inability to pay for a test under this subsection.

(g) As a condition of parole, the parole board:

(1) may require a parolee who is a sex ~~and violent~~ offender (as defined in ~~IC 5-2-12-4~~ IC 11-8-8-5) to:

(A) participate in a treatment program for sex offenders approved by the parole board; and

(B) avoid contact with any person who is less than sixteen (16) years of age unless the parolee:

(i) receives the parole board's approval; or

(ii) successfully completes the treatment program referred to in clause (A); and

(2) shall:

(A) require a parolee who is ~~an~~ a sex offender (as defined in ~~IC 5-2-12-4~~ IC 11-8-8-5) to register with a ~~sheriff (or the police chief of a consolidated city)~~ local law enforcement authority under ~~IC 5-2-12-5~~; IC 11-8-8;

(B) prohibit the sex offender from residing within one thousand (1,000) feet of school property (as defined in IC 35-41-1-24.7) for the period of parole, ~~unless the sex offender obtains written approval from the parole board; and~~

(C) prohibit a parolee who is ~~an~~ a sex offender convicted of a sex offense (as defined in IC 35-38-2-2.5) from residing within one (1) mile of the victim of the sex offender's sex offense ~~unless the sex offender obtains a waiver under IC 35-38-2-2.5; and~~

(D) ~~prohibit a parolee from owning, operating, managing, being employed by, or volunteering at any attraction designed to be primarily enjoyed by children less than sixteen (16) years of age.~~

The parole board may not grant a sexually violent predator (as defined in IC 35-38-1-7.5) or a sex offender who is an offender against children under IC 35-42-4-11 a waiver under subdivision (2)(B) or (2)(C). If the parole board allows the sex offender to reside within one thousand (1,000) feet of school property under subdivision (2)(B), the parole board shall notify each school within one thousand (1,000) feet of the sex offender's residence of the order.

(h) The address of the victim of a parolee who is ~~an~~ a sex offender

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convicted of a sex offense (as defined in IC 35-38-2-2.5) is confidential, even if the sex offender obtains a waiver under IC 35-38-2-2.5.

(i) As a condition of parole, the parole board may require a parolee to participate in a reentry court program.

~~(j)~~ (j) As a condition of parole, the parole board:

(1) shall require a parolee who is a sexually violent predator under IC 35-38-1-7.5; and

(2) may require a parolee who is a sex offender (as defined in ~~IC 5-2-12-4~~, IC 11-8-8-5);

to wear a monitoring device (as described in IC 35-38-2.5-3) that can transmit information twenty-four (24) hours each day regarding a person's precise location.

~~(j)~~ (k) As a condition of parole, the parole board may prohibit, in accordance with ~~IC 35-38-2-2.5~~, IC 35-38-2-2.6, a parolee who has been convicted of stalking from residing within one thousand (1,000) feet of the residence of the victim of the stalking for a period that does not exceed five (5) years.

SECTION 4. IC 35-38-1-7.5, AS AMENDED BY P.L.173-2006, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7.5. (a) As used in this section, "sexually violent predator" means a person who suffers from a mental abnormality or personality disorder that makes the individual likely to repeatedly engage in any of the offenses described in IC 11-8-8-5. The term includes a person convicted in another jurisdiction who is identified as a sexually violent predator under IC 11-8-8-20. The term does not include a person no longer considered a sexually violent predator under subsection (g).

(b) A person who:

(1) being at least eighteen (18) years of age, commits an offense described in:

(A) IC 35-42-4-1;

(B) IC 35-42-4-2;

(C) IC 35-42-4-3 as a Class A or Class B felony;

(D) IC 35-42-4-5(a)(1);

(E) IC 35-42-4-5(a)(2);

(F) IC 35-42-4-5(a)(3);

(G) IC 35-42-4-5(b)(1) as a Class A or Class B felony;

(H) IC 35-42-4-5(b)(2); or

(I) IC 35-42-4-5(b)(3) as a Class A or Class B felony; or

(2) commits an offense described in IC 11-8-8-5 while having a previous unrelated conviction for an offense described in

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1 IC 11-8-8-5 for which the person is required to register as an
 2 offender under IC 11-8-8;
 3 is a sexually violent predator. **Except as provided in subsection (g),**
 4 **a person is a sexually violent predator by operation of law if an**
 5 **offense committed by the person satisfies the conditions set forth**
 6 **in subdivision (1) or (2), regardless of when the person committed**
 7 **the offense.**

8 (c) This section applies whenever a court sentences a person for a
 9 sex offense listed in IC 11-8-8-5 for which the person is required to
 10 register with the local law enforcement authority under IC 11-8-8.

11 (d) At the sentencing hearing, the court shall ~~determine~~ **indicate on**
 12 **the record** whether the person ~~is~~ **has been convicted of an offense**
 13 **that makes the person** a sexually violent predator under subsection
 14 (b).

15 (e) ~~If the court does not find the~~ a person ~~to be~~ **is not** a sexually
 16 violent predator under subsection (b), the court shall consult with a
 17 board of experts consisting of two (2) board certified psychologists or
 18 psychiatrists who have expertise in criminal behavioral disorders to
 19 determine if the person is a sexually violent predator under subsection
 20 (a).

21 (f) ~~If the court finds that~~ a person is a sexually violent predator:

- 22 (1) the person is required to register with the local law
 23 enforcement authority as provided in IC 11-8-8; and
 24 (2) the court shall send notice ~~of its finding under this subsection~~
 25 to the department of correction.

26 (g) A person who is ~~found by a court to be~~ a sexually violent
 27 predator may petition the court to consider whether the person should
 28 no longer be considered a sexually violent predator. The person may
 29 file a petition under this subsection not earlier than ten (10) years after:

- 30 (1) the sentencing court makes its ~~finding~~ **determination** under
 31 subsection (e); or
 32 (2) a person ~~found to be who is~~ a sexually violent predator under
 33 subsection (b) is released from incarceration.

34 A person may file a petition under this subsection not more than one
 35 (1) time per year. If a court finds that the person should no longer be
 36 considered a sexually violent predator, the court shall send notice to the
 37 department of correction that the person is no longer considered a
 38 sexually violent predator. Notwithstanding any other law, a condition
 39 imposed on a person due to the person's status as a sexually violent
 40 predator, including lifetime parole or GPS monitoring, does not apply
 41 to a person no longer considered a sexually violent predator.

42 SECTION 5. IC 35-38-2-2.2, AS AMENDED BY P.L.173-2006,

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SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.2. As a condition of probation for a sex offender (as defined in IC 11-8-8-5), the court shall:

- (1) require the sex offender to register with the local law enforcement authority under IC 11-8-8; and
- (2) prohibit the sex offender from residing within one thousand (1,000) feet of school property (as defined in IC 35-41-1-24.7) for the period of probation, unless the sex offender obtains written approval from the court.

If the court allows the sex offender to reside within one thousand (1,000) feet of school property under subdivision (2), the court shall notify each school within one thousand (1,000) feet of the sex offender's residence of the order. **However, a court may not allow a sex offender who is a sexually violent predator (as defined in IC 35-38-1-7.5) or an offender against children under IC 35-42-4-11 to reside within one thousand (1,000) feet of school property.**

SECTION 6. IC 35-38-2-2.5, AS AMENDED BY P.L.173-2006, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.5. (a) As used in this section, "offender" means an individual convicted of a sex offense.

(b) As used in this section, "sex offense" means any of the following:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2).
- (3) Child molesting (IC 35-42-4-3).
- (4) Child exploitation (IC 35-42-4-4(b)).
- (5) Vicarious sexual gratification (IC 35-42-4-5).
- (6) Child solicitation (IC 35-42-4-6).
- (7) Child seduction (IC 35-42-4-7).
- (8) Sexual battery (IC 35-42-4-8).
- (9) Sexual misconduct with a minor as a felony (IC 35-42-4-9).
- (10) Incest (IC 35-46-1-3).

(c) A condition of remaining on probation or parole after conviction for a sex offense is that the offender not reside within one (1) mile of the residence of the victim of the offender's sex offense.

(d) An offender:

- (1) who will be placed on probation shall provide the sentencing court and the probation department with the address where the offender intends to reside during the period of probation:

(A) at the time of sentencing if the offender will be placed on probation without first being incarcerated; or

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- 1 (B) before the offender's release from incarceration if the
 2 offender will be placed on probation after completing a term
 3 of incarceration; or
 4 (2) who will be placed on parole shall provide the parole board
 5 with the address where the offender intends to reside during the
 6 period of parole.
 7 (e) An offender, while on probation or parole, may not establish a
 8 new residence within one (1) mile of the residence of the victim of the
 9 offender's sex offense unless the offender first obtains a waiver from
 10 the:
 11 (1) court, if the offender is placed on probation; or
 12 (2) parole board, if the offender is placed on parole;
 13 for the change of address under subsection (f).
 14 (f) The court or parole board may waive the requirement set forth in
 15 subsection (c) only if the court or parole board, at a hearing at which
 16 the offender is present and of which the prosecuting attorney has been
 17 notified, determines that:
 18 (1) the offender has successfully completed a sex offender
 19 treatment program during the period of probation or parole;
 20 (2) the offender is in compliance with all terms of the offender's
 21 probation or parole; and
 22 (3) good cause exists to allow the offender to reside within one (1)
 23 mile of the residence of the victim of the offender's sex offense.
 24 However, the court or parole board may not grant a waiver under this
 25 subsection if the offender is a sexually violent predator under
 26 IC 35-38-1-7.5 **or if the offender is an offender against children**
 27 **under IC 35-42-4-11.**
 28 (g) If the court or parole board grants a waiver under subsection (f),
 29 the court or parole board shall state in writing the reasons for granting
 30 the waiver. The court's written statement of its reasons shall be
 31 incorporated into the record.
 32 (h) The address of the victim of the offender's sex offense is
 33 confidential even if the court or parole board grants a waiver under
 34 subsection (f).
 35 SECTION 7. IC 35-42-4-10, AS ADDED BY P.L.6-2006,
 36 SECTION 3, AND AS ADDED BY P.L.140-2006, SECTION 31, AND
 37 P.L.173-2006, SECTION 31, IS CORRECTED AND AMENDED TO
 38 READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) As
 39 used in this section, "sexually violent predator" *has the meaning set*
 40 *forth in means a person who is a sexually violent predator under*
 41 *IC 35-38-1-7.5.*
 42 (b) A sexually violent predator who knowingly or intentionally

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works for compensation or as a volunteer:

(1) on school property;

(2) at a youth program center; or

(3) at a public park;

commits unlawful employment near children by a sexual predator, a Class D felony. However, the offense is a Class C felony if the person has a prior unrelated conviction based on the person's failure to comply with any requirement imposed on an offender under ~~this chapter~~.

IC 11-8-8.

SECTION 8. An emergency is declared for this act.

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